IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6407 OF 2006

Janata Sahakari Bank Ltd. Satara
through its Chief Executive Officer
and Anr. ..Petitioners.
Vs.
Shri Vaibhav Balkrishna Kale
and Ors. ..Respondents.

Mr.V.Y.Jadhav, adv. for the Petitioners.
Mr.R.M.Patne, A.G.P. for the Respondent Nos.2 and 3.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 7, 2007.

P.C.:

1. The petition against the respondent no.1 was dismissed on 8-1-2007 for want of service to the respondent no.1. The learned counsel for the petitioner makes a statement that today only the petitioner is going to file an affidavit to show that the respondent no.1 was already served and, therefore, he will be seeking to recall the order of dismissal in respect of the respondent no.1.

2. Assuming that the respondent no.1 is served, heard the learned counsel for the parties. After perusal of the order, I find that there is no substance in the present writ petition. Petitioner no. 1 is co-operative bank and petitioner no.2 is the Special Recovery Officer of that bank. On the basis of

recovery certificate obtained by the petitioner no.1 certain property was put to auction sale and the respondent no.1 had purchased that property. He had paid the price to the petitioners and the sale certificate was issued to him. However, later on it was revealed that the boundaries given in the sale certificate did not tally with the boundaries of the property which was allegedly sold and, therefore, the respondent no.1 could not be put in possession of that property. In such circumstances, the respondent no.1 filed a petition before the District Consumer Forum. The petition was allowed and the district consumer forum directed the petitioner bank to put the respondent no.1 in possession of the property, which was put to auction, within 30 days, failing which the bank was directed to return the amount of consideration with 9% per annum to the respondent no.1. Against that order, the bank preferred an appeal before the Consumer Disputes Redressal Commission, Maharashtra State and obtained stay to that order. It was contended that as long as sale certificate is not cancelled, the respondent no.1 could not recover the consideration amount, which was already paid. In view of this legal position, the respondent no.1 approached the Additional Joint Registrar Co-operative Societies with an application for cancellation of the sale certificate and he also filed an application for condonation of

delay. That application is allowed by the Divisional Joint Registrar Co-operative Societies and delay of about 2 years 69 days in filing revision application was condoned. Against that order, the bank and the Special Recovery Officer have preferred the present petition.

3. In view of the facts stated above, I find no fault with the impugned order passed by the Divisional Joint Registrar Co-operative Societies. The petitioner can not be allowed to blow hot and cold. On one hand, they contended that they are not in a position to put the respondent no.1 in possession of the property sold in the auction and on the other, they are also not willing to refund his auction money unless the sale certificate is cancelled. Condonation of delay for setting aside that sale certificate is necessary.

4. I find no substance in the writ petition. In the result, petition stands dismissed summarily.

[J.H.BHATIA, J.]